SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

497

JOSEPHINE HANNER,

Petitioner,

v.

CECIL DeMARCUS,

Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

OCTOBER TERM, 1967

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COMES NOW your respondent, CECIL DeMARCUS, by and through his counsel undersigned, and for his response to the petition for writ of certiorari filed herein states as follows:

SUMMARY OF ARGUMENT

It is respondent's contention that only one Federal question has been raised by petitioner, that being designated as Number I of petitioner's QUESTIONS PRESENTED FOR REVIEW. Said question has been decided in favor of respondent in the case of Endicott-Johnson Corp. v. Encyclopedia Press, 266 U.S. 285 (1924). Accordingly, the instant case is not within the purview of Rule 19(a), Revised Rules of the Supreme Court of the United States, and ought not to be accorded the exercise of this Court's discretionary power of review.

ARGUMENT

Petitioner's Questions Presented Numbers II and III Do Not Raise Federal Questions Cognizable By This Honorable Court.

Implicit in petitioner's phrasing of these issues and the arguments appertaining thereto

are two notions:

First, that the fact of compliance or non-compliance with the formal requirements of the State Statute regulating executions is a matter for this Court to determine; and

Second, that the value of the property executed upon and the position of the Respondent as special master are relevant to the constitutionality of the position taken by the Supreme Court of Arizona.

It is respectfully submitted that established principles of constitutional law contravene these notions.

> "When, then, a state court decides that a particular formality was or was not essential under the state statute, such decision presents no Federal question, providing always that the statute as thus construed does not violate the Constitution of the United States by depriving of property without due process of law. This paramount requirement being fulfilled, as to other matters the state interpretation of its own law is controlling and decisive." French v. Taylor, 199 U.S. 274, 278 (1905), quoting from Leigh v. Green, 193 U.S. 79 (1904).

The opinion of the Supreme Court of the

State of Arizona in the instant case decides several issues of fact and local law which should not be reviewed by this Honorable Tribunal:

(1) Execution upon the particular property was reasonable under the circumstances, despite the alleged value thereof. (Opinion of the Supreme Court of Arizona, Petitioner's Brief p. 22)

(2) The "notice" required by Rule 53(a), Arizona Rules of Civil Procedure, 16 A.R.S., refers to a notice to the debtor of his obligation rather than of the intended execution. (Opinion of the Supreme Court of Arizona, Petitioner's Brief p. 20)

(3) Petitioner neglected to file a supersedeas bond or to exercise her statutory equity of redemption--either of which action would have appropriately remedied her present situation. (Opinion of the Supreme Court of Arizona, Petitioner's Brief, pp. 21, 22)

(4) "Execution", as used in Rule 53(a), Arizona Rules of Civil Procedure, 16 A.R.S.,

means execution upon property rather than upon the body.

Applying the principles enunciated in French v. Taylor, supra, much of petitioner's argument is bootless. Her historical excursion into contempt per Cutting v. Van Fleet, 252 Fed. 100 (9th Cir. 1900), cannot erode Arizona's province to define and interpret the word "execution" as it did. Petitioner's excoriation of respondent as a dishonorable officer of the Court ignores the fact that Mr. DeMarcus's duties as master had long since terminated when he chose to enforce his rights as a creditor. Petitioner's repeated assertion that unconstitutional inequity proceeded from a failure to comply with the provisions of the Arizona Statutes falls before the findings of the Arizona Supreme Court that said statutes were obeyed and that petitioner neglected her appropriate remedies.

The Sole Federal Question Presented by Petioner Has Been Decided in Respondent's Favor By This Court.

Otherwise phrased, petitioner's QUESTION

PRESENTED Number I asks whether the requirements of due process demand that a defendant who has been granted an opportunity to be heard and has had his day in court should, after a judgment has been rendered against him, have further notice of execution against his property. This question has been answered in the negative by Endicott-Johnson Corp. v. Encyclopedia Press, supra, and the cases cited therein.

CONCLUSION

It is respectfully submitted that the foregoing considerations exclude the instant case from the contemplation of Rule 19(a), and therefore from the proper scope of this Honorable Court's discretionary power of review. Respondent prays that the petition of Josephine Hanner be denied.

Respectfully submitted,

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